



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
FILLMORE FIELD OFFICE

35 East 500 North
Fillmore, Utah 84631



In Reply Refer to:
3802
(U-010)
UTU-078270

July 8, 2004

CERTIFIED MAIL #7002 3150 0004 1699 4896
RETURN RECEIPT REQUESTED

DECISION

ROBERT STEELE
1055 N 400 E
NEPHI UT 84648

43 CFR 3802
Plan of Operations

RECEIVED

JUL 12 2004

DIV. OF OIL, GAS & MINING

Plan Rejected for Failure to Submit Information

On October 18, 1999, you submitted a 43 CFR 3802 Plan of Operations (Plan) proposing mining activity within the King Top Wilderness Study Area (WSA). After September 1992, the BLM could no longer allow surface disturbing activities within WSA's, therefore, your plan, on October 19, 1999, was rejected. You appealed the decision to the Interior Board of Land Appeals (IBLA), and on July 15, 2003, the IBLA remanded the case file back to this office for further review. On October 20, 2003, my staff requested more information in order to have complete Plan to evaluate, and gave you 90 days in which to submit the information, or the Plan would be rejected again. You received the request on October 24, 2003. On January 12, 2004, your attorney, David Leavitt, requested a 60 day extension to submit the information. The request was granted, and the new deadline was March 23, 2004. When that deadline approached, Mr. Leavitt called Jerry Mansfield of my staff, and requested that the deadline be pushed back to June 1, 2004. On June 1, 2004, Mr. Leavitt called again, and requested another 30 days, until June 30, 2004.

As of the date of this decision, this office has not received the information. Instead, on July 2, 2004, you called Jerry Mansfield and stated that you wanted the Plan rejected in a manner that would allow you to appeal again to the IBLA on the basis that mining law actions are not subject to the nonimpairment standard, especially in WSA's that the Bureau of

Land Management (BLM) did not recommend as wilderness. You are correct in your statement that the BLM did not recommend the King Top WSA for wilderness designation. The Utah BLM Statewide Final Environmental Impact Statement dated November, 1990 summarized the rationale as follows:

"The area is natural. Outstanding solitude is lacking on about 40 percent of the area. Outstanding primitive recreation for an extended period is limited by lack of water. With the exception of Fossil Mountain, there are no distinctive features or destination points to attract visitors. Fossil Mountain is on the edge of the WSA in proximity to access by vehicles. The 12 in-held State-owned sections are scattered throughout the WSA, and these sections are leased for oil and gas. Road access, if required by future proposals on State lands, would substantially detract from maintenance of wilderness values on the surrounding lands and within the WSA as a whole; therefore resulting in wilderness manageability problems."

However, in IBLA 93-286, Dave Paquin (copy enclosed), the IBLA has already addressed the argument that, following a finding that an area is not suitable for a WSA, the BLM should no longer continue to manage it under the non-impairment standard. It is stated on 129 IBLA 80 "That BLM did not recommend the WSA for inclusion in the wilderness system does not affect the continuing management of the WSA...The final decision whether it will be included in the wilderness system rests with Congress, and the Department's duty to manage the lands consistent with the nonimpairment standard continues until Congress has acted."

Since the *Interim Management Policy and Guidelines for Lands Under Management Review* states in Chapter 1(B)(2) that the nonimpairment standard precludes any surface disturbance within a WSA that would require reclamation, and your mining proposal specifically states that "Reclamation will be done under State Reclamation Practices", there seems little doubt that your proposal does not meet the nonimpairment standard. However, the 43 CFR 3802 regulations mandate that the BLM must prepare an Environmental Assessment (EA) to determine if impacts from a mining operation would impair the suitability of the area for preservation as wilderness. In 1980, when the regulations were published, *impair the suitability of the area for preservation as wilderness* was defined as: "taking actions that cause impacts, that cannot be reclaimed to the point of being substantially unnoticeable in the area as a whole by the time the Secretary is scheduled to make a recommendation to the President on the suitability of a wilderness study area for inclusion in the National Wilderness Preservation System. The IBLA has indicated that, even though said deadline has passed, an EA should still be prepared to determine if an operation conducted under the mining law would cause impairment, hence your appeal was remanded back

to this office. However, before an EA will be prepared, you must comply with §3802.1-4(c), and submit a complete plan. Since you have not done so, your Plan is rejected due to being incomplete.

Your Plan was previously rejected because this office made a finding that it did not meet the nonimpairment standard. The IBLA remanded it back on the basis that the finding was unsupported, although it did state: "It is within BLM's authority to reject any mining plans of operation that would impair the suitability of the area for inclusion in the wilderness system, if rejection is reasonable and supported by the record." You may file a new Plan if you wish, however, if it proposes surface disturbance that requires reclamation, it will most likely be rejected since the IBLA has affirmed that, unless the activity is grandfathered, operations conducted under the mining law are subject to the nonimpairment standard. Activities that are acceptable under the nonimpairment standard are described in § 3802.1-2.

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in the Fillmore Field Office within 30 days of receipt of this decision. You have the burden of showing that the decision appealed from is in error.

If you wish to file a petition to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals (Board), the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay **must** also be submitted to each party named in this decision and to the Board, and to the appropriate Office of the Solicitor (see 43 CFR 4.412) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

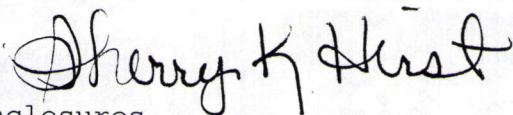
Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

- (1) The relative harm to the parties if the stay is granted or denied,

- (2) The likelihood of the appellant's success on the merits,
- (3) The likelihood of immediate and irreparable harm if the stay is not granted, and
- (4) Whether the public interest favors granting the stay.

As mandated in 43 CFR 3809.808 this decision will remain in full force and effect during review and appeal unless a written request for a stay is granted.



Enclosures

IBLA 93-286
Form 1842-1

cc: Terry Steele, P.O. Box 353, Santaquin UT 84655
Tom Munson, UDOGM (S/027/084)